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TO MAINTAIN THE RATIO ON COST-OF-LIVING INCREASES FOR CURRENT FEDERAL EMPLOYEES' SALARIES AND RETIRED FEDERAL EMPLOYEES' BENEFITS

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 1380

TO AMEND TITLE 5 OF THE UNITED STATES CODE TO INSURE THAT CIVIL SERVICE RETIREES DO NOT RECEIVE ANNUITIES WHICH ARE IN EXCESS OF THE SALARIES RECEIVED BY INDIVIDUALS WORKING IN THE POSITIONS FROM WHICH THE RETIREES WERE RETIRED

MAY 20, 1982

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TO MAINTAIN THE RATIO ON COST-OF-LIVING INCREASES FOR CURRENT FEDERAL EMPLOYEES' SALARIES AND RETIRED FEDERAL EMPLOYEES' BENEFITS

THURSDAY, MAY 20, 1982

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:05 a.m., in room 3302, Dirksen Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Present: Senators Stevens and Mattingly.

Staff Present: Wayne A. Schley, staff director; Jamie Cowen, chief counsel; Pat Halcomb, chief clerk; Edwin S. Jayne, minority staff director; Karah Henry, staff director, Congressional Operations and Oversight Subcommittee.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Good morning.

The purpose of our hearing today is to hear testimony on S. 1380, a bill which will insure that civil service retirees do not receive annuities which exceed the salaries of their original positions.

Currently, upon retirement an employee's annuity averages approximately 2 percent a year of the average of his high 3 years of salary. Once retired, however, the individual also receives a cost-of-living increase once a year on top of the annuity. Capped salaries, coupled with CPI adjusted retirement income, have created a situation where many individuals who have been retired for several years receive an annuity which exceeds the salaries of the positions from which they retired.

S. 1380 is designed to attempt to control this inequity between active and retired Federal workers. The bill would cap the annuity an individual receives so that it could not exceed the salary an individual would receive had he remained in active service.

Our first witness this morning is the Senator from Georgia, Senator Mattingly.

Good morning, Senator. We would be happy to hear your testimony on your bill, and would invite you to sit in on the balance of the hearing if you have time.

TESTIMONY OF HON. MACK MATTINGLY, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MATTINGLY. Thank you very much, Mr. Chairman. As time will allow me, I will be happy to stay.

I appreciate the opportunity this morning to testify on S. 1380, a bill I introduced last year to correct the inequity of Federal retirees' receiving annuities greater than the salaries of the workers currently in the jobs from which they retired. I might also add it is unfortunate that we have to have a costly hearing to eliminate this inequity.

The issue is one of simple fairness. The retired employee should not end up making more money than his replacement in the same "GS" grade. The current system promotes early retirement. Why should a worker continue in his job today when he can retire now and in a few years, through cost-of-living increases, he will be making more than in active service?

We are not talking about a great number of people. In fact, well over half the people who work for the Federal Government never collect a dime from the retirement program.

The inequity I am attempting to correct has resulted in well publicized horror stories that have tended to blacken the names of all Federal employees, including Members of Congress.

For example, former Representative Hastings Keith is a triple pensioner. He currently receives well over $70,000 a year for his congressional service—much more than the amount that a Congressman currently makes. Former Representative Keith has now become a champion against this wild escalation. His firsthand experience with the system has convinced him that we must take action now.

My bill is only a first step in the wide revision that must be made in this retirement program. But it seems to me to be just plain fair that people who are currently retired from a Federal post should not make more than a person currently working in that same position.

I have here a copy of a letter from Donald Devine, the Director of the Office ot Personnel Management, which shows his interest in this bill. I would like to make that a part of the record also. As he points out, not only is this fluke in the retirement program expensive, but it also creates a personnel management problem. Just imagine the disincentives associated with knowing that someone who performed the exact job that you are presently occupying makes more money in his retirement than you do working.

This bill would not affect a large group, but it would solve a basic inequity in the program. I am confident that the U.S. Federal Government is the only employer that not only encourages its employees to retire relatively early, but rewards some retirees with annuities greater than their working salaries.

Mr. Chairman, my intent is to protect the morale of current employees of the Federal Government. Too often they have been attacked as beneficiaries of a skewed retirement program, where you can get paid more to retire than to work. The dollar savings from this bill are not huge, but they are worth noting. CBO has estimat-

ed that if this cap had been in effect since October 1, 1978, savings for this fiscal year, 1982, would total close to $200 million.

Mr. Chairman, I hope to continue to work with you for a good revision of the civil service retirement program. The passage of my bill, although only a first step, would definitely aid in the control of this system.

I would like to thank the chairman for the opportunity to come to testify this morning. Once again, I would like to make the letter from Dr. Devine a part of the official record.

Senator STEVENS. It will be made part of the record.

[The letter referred to follows:]

OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., June 25, 1981.

Hon. MACK MATTINGLY,
U.S. Senate,
Washington, D.C.

DEAR MACK: I was interested to see in the Congressional Record that you have introduced S. 1380, which would cap Civil Service annuities at the current salaries for the retirees' last jobs.

As I indicated when we discussed this issue on March 26, I agree with you that it is disturbing for us to have individuals on the retirement rolls who are receiving more money than they would be getting if they had continued to work. This is not only expensive, but it is a problem from a personnel management standpoint, and it exposes our whole Civil Service Retirement System to criticism.

While I am not sure at this point whether we will be able to agree with the technical details of your bill or will try some other approach instead, we appreciate your effort in beginning consideration of this issue, and look forward to working with you on it in the future.

Sincerely yours,

DONALD J. DEVINE, *Director.*

Senator STEVENS. Let me see if I understand this. If a person has been a Senator and then becomes an ambassador, and the salary is reduced in his service—say he has a higher salary as a Senator, a lower salary as an ambassador—but that is his last job, does your bill base the ceiling on the retirement pay on the last job or the highest paying job that this person had?

Senator MATTINGLY. I think, if I am not mistaken—and you may be able to help—the last high 3 years.

Senator STEVENS. As we understand it, it is the highest that was held 6 months during the 3-year period.

Senator MATTINGLY. I believe that is correct, yes.

Senator STEVENS. So in that case if the person had been a Senator for 6 years and an ambassador for 4 years, his retirement would be based on his Senate salary, and that would be the cap—the Senate salary.

Senator MATTINGLY. To be quite honest with you, Mr. Chairman, I will need to have that clarified.

Senator STEVENS. I just want to make sure we understand. I will ask Dr. Devine. Why don't you join us for a while and we will see what Dr. Devine has to say.

We are happy to have you here this morning.

Mr. DEVINE. Thank you, sir. Shall I begin?

Senator STEVENS. Yes, sir, please.

TESTIMONY OF DONALD J. DEVINE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. DEVINE. I appreciate being invited to appear today to discuss S. 1380, a bill introduced by Senator Mattingly, to limit certain increases in civil service annuities.

S. 1380 would address a very serious problem that has developed in the civil service retirement system in recent years—the excessive indexation of civil service annuities. Annuities under our retirement system have increased much faster than Federal pay in the last several years, and the result has been that annuities for people who retired in the past are substantially higher than the annuities for new retirees who have a similar service history. This disparity has grown so fast that there are many retirees whose annuities exceed the current pay rate for their last job. As a result, many of our most valuable senior career employees have found it financially advantageous to retire at their first eligibility, in order to avoid a loss in the amount of their annuity. Furthermore, the very high annuities that have resulted from cost-of-living increase adjustments have been the subject of much criticism, and have, in my opinion, been very damaging to the credibility of our retirement system with the general public, as well as to the public perception of Federal employees generally.

S. 1380 would deal with this problem by putting a cap on each civil service annuity, and by allowing cost-of-living adjustments only to the extent they would not raise the annuity above the applicable cap.

For an annuity commencing before March 1, 1981, the cap would generally be the final pay of the retiree, increased by subsequent average General Schedule increases. In addition, no annuity would exceed the current payable rate for GS–18, or for the retiree's last job if that job were higher than GS–18.

A somewhat different method would be used to cap annuities that have commenced since March 1, 1981. Here, the cap would be a rate computed by taking the current pay rate for the highest job the retiree held for at least 6 months during his high 3-year period, and multiplying that current pay rate by the same percentage of the "high 3" average pay that was used in computing his original annuity. The effect of this formula would be somewhat similar to recomputing the annuity, using current pay rates.

These caps under S. 1380 would move in the direction of preventing annuities for new retirees from being less than those of people who retired earlier, but the bill would not, in our view, do enough to deal with the excessive adjustments that have been received by those already on the retirement roll. For example, an employee with 30 years of service receives an initial annuity equal to about 56 percent of his "high 3" average pay. Under S. 1380, an employee in this category who retired before March 1, 1981, would be allowed to receive increases in his annuity up to 100 percent of the current equivalent of his final pay. However, if the same employee retired after March 1, 1981, his annuity would be limited to 56 percent of the current equivalent of his final pay. Thus, pre-1981 retirees—the ones who have benefited the most from the excessive an-

nuity adjustments in the past—would be treated more generously under S. 1380 than more recent retirees.

Therefore, we urge the subcommittee to consider instead the approach taken in the legislative proposal we have recently submitted to Congress. I would like to submit a copy of this proposal, entitled the "Civil Service Retirement Amendments of 1982," for the record.[1] One part of this proposal is a provision to keep annuities in reasonable alinement with current pay. This provision would operate in a more uniform way than would S. 1380, and would be much simpler to administer. Future annuity adjustments would be based on the lesser of the rise in the Consumer Price Index or in the average General Schedule pay. This would have a similar effect to that of S. 1380 for new retirees, but would avoid giving different increases for different annuitants because of grade-to-grade variations in the amount of the General Schedule pay increase.

For those now on the annuity roll, our legislative proposal would limit or withhold future annuity increases if the cumulative adjustment that has been made in each annuity since it commenced exceeds the cumulative average increase in General Schedule pay since the commencement date. Under this proposal, a much greater savings would be reached than under S. 1380, because those now on the roll would be capped along with newer retirees. All of our annuitants, whenever they retired, would, on the average, be limited to approximately the same annuities that new retirees with similar service histories would receive. Our proposal would phase in this cap by freezing increases only for those whose current annuities exceed the proposed cap by more than 20 percent, while those whose annuities exceed the proposed cap by less than 20 percent would be permitted to receive three-quarters of the annual annuity adjustment.

I would like to emphasize that under our proposal, nobody's annuity would be cut. We are talking about not increasing the annuities by future adjustments.

We agree wholeheartedly with the objectives of S. 1380, but we believe our legislative proposal takes a better approach to solving the problem of excessive indexation of civil service annuities, both because our approach would deal more consistently with those annuitants now on the retirement roll, and because our approach would be much easier to administer. Therefore, I would strongly urge that the subcommittee take favorable action on our proposal in lieu of taking action on S. 1380.

Thank you very much, and I would be very happy to answer any questions you have.

Senator STEVENS. As I understand the OPM proposal, there would be no actual cap put on future cost-of-living adjustments as far as the salary of the job from which the person retired. Is that right? The limit would be the cumulative adjustments of those people who were in the General Schedule, or still are in the General Schedule. Is that right?

Mr. DEVINE. It would apply to all retirees. The adjustment would be based on the General Schedule because the increases there relative to the wage grade have been less, overall.

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[1] See p. 25.

Senator STEVENS. I understand that. But if the General Schedule had a cost-of-living adjustment of 6 percent and the person had already retired, had received adjustments which cumulatively added up to more than those who are currently serving in the General Schedule, and exceeded by 20 percent that average, they would get three-quarters. Is that right?

Mr. DEVINE. If it exceeded 20 percent, they would not get any increase.

Senator STEVENS. Up to 20 percent?

Mr. DEVINE. Right.

Senator STEVENS. Now, the new retirees would get the same adjustment as those who were actually still employed in the General Schedule. Is that right?

Mr. DEVINE. Yes, sir, or the CPI if it were less.

Senator STEVENS. Why would you want to give the retirees any less than those who were currently employed?

Mr. DEVINE. Well, everyone would be treated equally on the CPI or the salary level, whichever was less.

Senator STEVENS. I understand. But you do not have a proposal that would pay retirees, generally a new retiree, less in terms of cost-of-living adjustment than that actually received by those who are still employed in the General Schedule.

Mr. DEVINE. It could happen if the wage increase were more than the CPI, since the wage increase is calculated independently of the Consumer Price Index.

Senator STEVENS. I am not talking about wage increases, I am talking about cost-of-living adjustments. It would be the same for those who are still employed as those who are newly retired.

Mr. DEVINE. Again, the people who are still employed may get a salary increase less than what the CPI went up. There is a lot of discussion up here of giving a zero wage increase next year. Since that zero would be lower than the CPI, even though inflation is now running at an annualized rate of only about 3 percent, then the retiree would get the lesser of the two.

Senator STEVENS. Why don't you say "provided they get the same amount as those who are still serving under the General Schedule." Isn't that what you are really saying? The General Schedule normally would get the CPI. But if it gets less than the CPI, that is what the retired person would get. Is that correct? Why don't we just say they are equal?

Mr. DEVINE. I must admit I am not as sharp as normal this morning. The problem is they are independent of each other. The wage increase for active employees can be either above or below the cost-of-living increase. You wouldn't want the retirees to get the increase in General Schedule pay because retirees are supposed to receive a cost-of-living increase, not a pay adjustment. And if we succeed in doing what I know both of us want to do at the executive level, and that is to catch up on some of the increases in pay which haven't been passed along, then the pay increases could go beyond the CPI, hopefully when things get better in the future. So it has to be based on the retirement system. The retirement system is set up to give a cost-of-living increase.

Senator STEVENS. All right, I understand.

Is there going to be any difficulty in administering either your suggestion or the suggestion of S. 1380?

Mr. DEVINE. Well, S. 1380 would be very, very difficult to administer and very expensive because it envisions an individual search, which is impossible for us to do. We can make computer matches, and that is what we would do under our proposed bill. It is in the form of the adjustment method.

Senator STEVENS. Senator Mattingly's bill is more fair on an individual basis. Yours is a general proposal that would equalize cost-of-living adjustments on a general basis under the General Schedule and for those who retire. Yours is more of a generic proposal than a subjective individual analysis. Would that be fair?

Mr. DEVINE. Yes, sir, a more general solution. To do it individually case-by-case would just be an incredible expenditure of money.

Senator STEVENS. Therefore, yours has a greater cost savings because of the difference primarily in administration. Would you say that is also a fair comment?

Mr. DEVINE. No, it would save costs in the administration, but its primary greater savings, which are very substantial, are in the way it treats current retirees. S. 1380 allows current retirees to go up to 100 percent of their "high 3" average rather than the 56 percent, for example, that they would get under our proposal. So our savings are mostly in the area of limiting the increases for those who have already retired, which S. 1380 really wouldn't touch because it goes to 100 percent of their "high 3" average rather than to 56 percent.

Senator STEVENS. How many people are actually affected by this legislation, by your proposal or by Senator Mattingly's proposal?

Mr. DEVINE. I don't have the figures on Senator Mattingly's proposal. It would be substantially less.

In 1984, about 62 percent of annuitants would receive no increase and 23 percent would receive the three-quarter increase.

Senator STEVENS. Under your proposal?

Mr. DEVINE. Under our proposal.

Senator STEVENS. Do you have an estimate, Senator, how many would be affected under your proposal?

Mr. DEVINE. A very small number under Senator Mattingly's proposal would be affected.

Senator MATTINGLY. How many people did you say?

Mr. DEVINE. Under our proposal, about 62 percent of the annuitants would receive no increase and 23 percent would receive the three-quarter increase.

Senator MATTINGLY. Ours would impact of those retired approximately 4,000 people.

Senator STEVENS. My staff tells me there are about 1.2 million retirees plus 400,000 survivors, a total of about 1.6 million in the retirement system. Is that right?

Mr. DEVINE. Yes, sir.

Senator STEVENS. And not all of those would be affected obviously by Senator Mattingly's proposal. How many of those would be affected by yours, 66 percent of all of them?

Mr. DEVINE. About 80 percent would be affected by it.

Senator STEVENS. By your proposal?

Mr. DEVINE. Yes.

The real problem we are trying to address is an equity problem. We have had semiannual adjustments in our retirement system, unlike social security where adjustments are annual. We have had the so-called look-back provision. We have had the "kicker." Until last year an annuity which commenced on the day before the adjustment included the entire amount of the increase, even if the recipient retired a day before it became effective. In our opinion, too many special benefits were put in the past. We think some equity has to be put into the system—especially given the tremendous incentive to retire that it gives to people, including those who are at the height of their careers. And I don't blame them one bit for retiring, frankly, because the way the system is now they would be economically foolish not to. Those who stay are patriots in the true sense of the term. They are making economic sacrifices to work for the Government.

Senator STEVENS. Do you have any questions, Senator?

Senator MATTINGLY. Yes, I sure do.

What sort of cost savings do you estimate if legislation such as yours were passed?

Mr. DEVINE. We estimated $385 million in fiscal 1983 if it went into effect for all fiscal 1983; $963 million in 1984; $1.298 billion in 1985; $1.526 billion in 1986; $1.2603 billion in 1987. Very substantial cost savings.

Senator MATTINGLY. Rather significant.

This retroactivity in pension reform is very controversial, there is no doubt about that. In your statement you had mentioned the management problems that may result when a retiree is to receive more in compensation than Federal workers holding the same level. Could you describe what sort of management problems you are talking about now?

Mr. DEVINE. Again, as I was just mentioning, there are tremendous incentives in there for managers that have gotten the kind of experience which can't be substituted for any academic learning or anything like that. It is real, a hands-on experience in handling the many, many difficult tasks that the Federal Government is asked to undertake. And with the early retirement age, they are really in the prime of their lives. They take an economic view of what they would get going into retirement compared to staying in active service, and the incentives are so powerful to retire and to deprive the Government and its citizens of their experience. A 55-year old individual is in a position to contribute 10, maybe more, 20 years maybe, of his or her expertise and experience to the Government.

I have seen it at OPM itself in terms of our own administration. One of our most capable individuals, who the President gave an award to for his distinguished service, retired. I miss his expertise sorely, but I couldn't blame him a bit for retiring when the economic advantages are so strong there. Another individual, an assistant director, retired. He came to me and he just laid out the facts and figures in front of me and said, "Don, what can I do?" I just couldn't argue with him.

Senator MATTINGLY. Let me ask you another question. What financial impact would there be if S. 1380 passed the way it is, without making it retroactive?

Mr. DEVINE. Our estimate is it might save $1 million or something like that.

Senator MATTINGLY. Well, in the out years it is saving more than that.

Mr. DEVINE. Yes, in the out years.

Senator MATTINGLY. I guess it would be $200 million.

Mr. DEVINE. There is no question that in the out years it would be more. It still wouldn't really address the problem of the current annuitants. I would say I don't see that this is a retroactive situation. What we are talking about is not giving future increases. We are not talking about taking a penny away from anybody. They would get everything that they get now; they just couldn't get increases.

Senator MATTINGLY. It wouldn't be difficult administratively for the OPM just to place an across-the-board cap as prescribed in S. 1380 rather than a case-by-case search, would it?

Mr. DEVINE. Well, as we read S. 1380 as it is currently written, it seems to imply a case-by-case search, but certainly could be amended to have a general cap.

Senator MATTINGLY. Of course, the intent of S. 1380, which is I am sure the intent also of your proposal, is that those in retirement don't get more than those currently working in the job.

Mr. DEVINE. I recognize that, and I owe you an apology on that, since our staff gave you some technical assistance on this, they tell me, and I am not sure they did what you wanted to do on that.

Senator MATTINGLY. But that is the intent, though.

Mr. DEVINE. Yes.

Senator MATTINGLY. What we are trying to do is make sure that Senators and Congressmen and Federal employees in their pension don't get more in retirement than those people currently holding a job. If I am in retirement, I should not draw more money than Senator Stevens does, still serving in Congress. We should not be able to allow more than what the current salary is.

Mr. DEVINE. Yes; as I said in my letter to you, we agree in principle as to what the inequity is and the serious disincentive for remaining in the active work force. It is a question of difference in approach.

Senator STEVENS. Could you tell me, isn't there a simple solution to this, and that is to say that no person in retirement can receive more retirement compensation than the average of the "high 3" years? Couldn't it simply be done and draw a line so you cannot have the result that Speaker McCormack had? Say that is the ceiling on a subjective basis, that shouldn't be hard to search in a computer. You have the "high 3" average in order to figure the annuity, don't you? I think that is basically what the Senator is saying. You say 56 percent, but we all know Speaker McCormack was receiving considerably more than the current Speaker of the House, and I know some Senators who are almost at that point, if not beyond it, and I think I know some people in the General Schedule who are very close to it right now.

Mr. DEVINE. Oh, yes, 62 percent of the annuitants would not get a raise next year; that means 62 percent of the current retirees get 20 percent more than people who are now retiring from the system.

This is a terrible negative incentive to work; 62 percent of them get 20 percent more.

Senator STEVENS. Than those who would retire now?

Mr. DEVINE. Yes.

Senator STEVENS. And that happened because we permitted the disparity between the General Schedule, those who are actually working, and actually gave the CPI to those who had actually retired for a period of time.

Mr. DEVINE. Yes, plus the kicker and look-back, which were very expensive provisions.

Senator STEVENS. They weren't that expensive because the kicker came about when you were talking about a 2- or 3-percent difference, not 13 and 15 percent difference. The kicker was related to what was it, an extra 1 percent when you exceeded 3 percent, wasn't it?

Mr. DEVINE. Yes.

Senator STEVENS. I wish we had to worry about those days.

Senator MATTINGLY. Let me ask you one other question. If we modify, took the "high 3" provision which would take care of the lower paying of the final Federal jobs, wouldn't that be acceptable?

Senator STEVENS. Senator, I think we ought to ask Dr. Devine and his staff to give us an analysis of a bill that would be very simple and concise and would say no annuitant shall receive in retirement annuitant's benefits in excess of the average of the "high 3" years during the person's employment by the Federal Government.

Senator MATTINGLY. Mr. Chairman, I think S. 1380 is exactly that except for saying the "high 3," which I think that we can modify this bill to do just that.

Senator STEVENS. Could you attempt to draw us a bill to do that and analyze it in terms of cost and how many people it would impact?

Senator MATTINGLY. You just scratch it in on the current bill.

Senator STEVENS. I have an idea it would impact 40,000 or 50,000 people, but it would set a precedent for future action.

Mr. DEVINE. Would you want to go back and actually reduce amounts people are currently getting?

Senator MATTINGLY. No; we don't do that, just in the future.

Senator STEVENS. No future adjustment can put a person in a position where that person would receive in annuitant's benefits amounts in excess of the average of their "high 3" average actual compensation.

Mr. DEVINE. I would be very happy to draw up a bill.

Senator STEVENS. I guess the problem is with the Wage Board and postal workers, to figure out a similar concept. But it is still a bona fide concept. I think that is what we are trying to do. We can address your problem in terms of the overall retirement readjustment. That is an overall programmatic adjustment in your bill, as I understand. This feature is not the whole bill.

Mr. DEVINE. That is correct, there are many features to this bill.

Senator MATTINGLY. Right, and let me add on to that. To try and get something passed in this place that would include everybody, sometimes it takes forever. That is why the early passage of this, with the modification in it, would plug one more hole in the dike.

And I want to do that expeditiously. I also want to do it fast. So I would like to have that information right away so we can make this modification, so we can send this bill to the full Governmental Affairs Committee, so we can send it to the Senate and pass it. Out and out it is not fair, and all we want to do is create fairness and equity and stop people getting more in retirement than what the current person working in the job gets.

Senator STEVENS. We haven't gotten to that, that is the second part of this bill. It is the adjustment of the base to the actual salary of the position from which the person retired. Now that is a subjective analysis and we need to have some guidance as to how that base of the average of the "high 3" years could be raised by changing pay schedule. That is where the cost would be in the administration, is it not, identifying that salary of the last position the person held? I think that is too subjective to try to enforce it. What I was saying is not tying it to the salary of the person who has the job the annuitant retired from, but to tie to the "high 3" average of that annuitant, which incidentally would make it cover a lot more people.

Mr. DEVINE. Yes, it would. And, as you say, the actual salary probably would be impossible for us to capture unless we went back to the files.

Senator STEVENS. The average of the "high 3" years is an individual computation, right?

Mr. DEVINE. Yes, sir.

Senator STEVENS. Now I think both your proposal and that of Senator Mattingly want to increase that baseline figure by the actual salary adjustments by a margin of the actual salary adjustments of the person, the position the retiree left. Am I right? Yours has the same built-in feature of adjustment, but yours isn't subjective, yours is computerized on generic application.

Mr. DEVINE. Yes, sir.

Senator STEVENS. Well, then you would have to adjust the base of this proposal I have made by the average adjustment in the GS schedule since the date of retirement.

Mr. DEVINE. Yes, sir.

Senator STEVENS. Can you crank that in so its average "high 3" is increasing as the wage adjustments take place on an average basis?

Mr. DEVINE. That is how we would have to do it.

Senator MATTINGLY. Let me say one thing. I don't object to what you are saying. But out in the private sector they do that, and it is not as complicated. You may want to look at some of the patterns they use, which I am sure you have already.

Mr. DEVINE. We have got a lot of different schedules we work on.

Senator MATTINGLY. Everybody does. I worked for a company that had 260,000 employees. I assure you very few made the same amount of money. And yet they understood how to calculate a retirement system. Of course, they sold computers, too.

Mr. DEVINE. The question isn't different amounts of money. We have General Schedule and wage grade schedule and postal employees and a whole bunch of others.

Senator STEVENS. That is a problem. I would appreciate your doing that. I have to chair another hearing. I do thank you for

your contribution to this hearing, and we look forward to receiving your analysis of what I consider to be a compromise between the two of you, and to seeing what the numbers would look like if we could approach it in that fashion.

Mr. DEVINE. We would be happy to look at it in that fashion.

Senator STEVENS. Mr. Cosgrove.

TESTIMONY OF JOHN E. COSGROVE, CHAIRMAN, FUND FOR ASSURING AN INDEPENDENT RETIREMENT

Mr. COSGROVE. Chairman Stevens, Senator Mattingly, we appreciate the opportunity to testify on S. 1380 because it would, in our judgment, if enacted, affect the members of the 25 national organizations which comprise our coalition, Fund for Assuring an Independent Retirement, known by the acronym FAIR. Most of the public officials and employees in these organizations work, or did work, for the Federal Government or the U.S. Postal Service. I am John E. Cosgrove, chairman of the board of directors of FAIR.

The stated purpose of this bill has a prima facie equity, quoting in part, "* * * to insure that civil service retirees do not receive annuities which are in excess of the salaries received by individuals working in the positions from which the retirees were retired." There are, however, we think several considerations which militate against this first impression, with all respect. First, the annuitant is not on an equal footing with the present occupant of his or her previous position; in most cases, to take one distinction, the annuitant has worked far longer and so a more substantial compensation is not unreasonable. And you are talking about different time periods, obviously, with regard to the two individuals, what he earned on the one hand as a worker and what he gets as an annuitant on the other. Second, many annuitants are not in a position to supplement their income as readily with outside employment, as would be the fact with other annuitants.

The history of Federal annuitants' cost-of-living adjustments bears also on this question: It is one of the most targeted of the labor standards or employment conditions of Federal workers.

Realizing that COLA's, by definition, follow inflation, Congress some years ago provided a 1-percent add-on, or sometimes called "kicker," to COLA's to compensate for the lag time between the actual rise in the cost of living and the adjustment in the annuity. As the pressure against public employees mounted, as it has so much over the last 5 or 6 years particularly, Congress repealed this benefit, but instituted, apparently as a substitute, a twice-a-year COLA. Then, perhaps since this too was a benefit, for some reason, Congress, in the reconciliation process in the budget legislation last year eliminated even this, and returned to the once-a-year COLA, without restoring the add-on.

This is only the sad history. Right now the Senate Budget Committee—this was true when I wrote this 2 days ago. As you know, by the hour the budget recommendations change. Right now the Senate Budget Committee has voted to freeze Federal pay raises this year—which of course affects Federal annuities—recognizing that compliance with pay comparability is more the exception than

the rule. In addition, the Senate Budget Committee recommends deferment of the next COLA—March 1983—for 1 year.

Not to be inactive in curbing comparability, the House Budget Committee would grant only a 4-percent pay increase in October, for this year, but allow the March 1983 annuity adjustment, capped at 4 percent, to apply through March 1985. Interestingly, veterans and railroad retirement recipients would not be so capped under the House plan. It seems, and happily, that social security beneficiaries' COLA's are to be left undisturbed for this year.

Against this background you can understand the resistance of employee-annuity groups to further tampering with the civil service retirement system and its COLA component, which almost inevitably leads, as would, we think, this bill, to the diminution of benefits for many people.

We would note, reviewing the civil service particularly, Congressman Hastings Keith. This is, in our judgment, the exception to the rule and obviously one much celebrated and of great interest across the country, of great discussion.

We believe that there should be no cuts in either the social security system or the civil service retirement program. Contrary to what many detractors of the system contend, the average annuity under civil service retirement is about $10,000 a year, not very much when one considers that it is a staff retirement system, on the one hand, and that the latest Department of Labor statistics indicate the poverty level of a family of four is now $9,200. Since Federal retirees have seen an erosion of their benefits, we believe that any further reductions would be grossly unfair.

I would say with respect to the loss of Government workers, Government executives, for example, who are of great competence, who retire seeing a benefit as an annuitant rather than a current employee, the fault for this lies in the continuous capping of the supergrades and the GS schedule people, on the one hand, that side of the teeter-totter, rather than the side that says they give great benefit to the country.

Senator STEVENS. Mr. Cosgrove, I have to go chair another hearing, so we will print your statement in the record in full.

I don't think anyone can argue with my background and support for the retirement system. Let me give you a series of five figures to show the problem.

A person had a $48,000 Government salary and retired in 1977 after 30 years. The retirement pay would have been approximately $28,000. That adjustment today by COLA's is now $44,000. A person having the same job would now have a salary of $57,500, but if that person retires this year, in 1982, that person retires at $32,000, or $12,000 less than the person who retired 5 years ago whose average "high 3" year had a top of $48,000, and this person is $9,500 higher in the salary level. But the retirement schedule would provide him with a greater retirement income because of the high COLA adjustments over that period of time, the 5 years. Through indexing, the person retired in 1977 today has $44,000, but the person retiring today, with a higher salary, would have $32,000. This is the disincentive that Dr. Devine and I are talking about. That is what is causing the retirements. It is not caused by people thinking they are going to get more in retirement, it is caused by

people thinking you better get out of Government now and earn another salary and build another retirement for social security or something else, and that is what is causing the early retirement.

Two out of three people who are eligibile to retire at an early date retire at that date. It is not the incentive of the high retirement, it is the disincentive of a maladjusted retirement where they can never catch up with those who retired ahead of them. That is the situation, $12,000 difference in retirement for the current retiree as opposed to one who retired 5 years ago because of the impact of COLA's.

Now we must find some way to adjust this. The Senator's bill does not deal with that question directly. It starts off by saying that the person who had the $44,000 can never reach, in terms of the Hastings Keith and Speaker McCormack situation, the point where they are going to get in excess of $57,500. That is the symbol we are looking at. That is all I am looking at for now, a symbol that we are going to stop the excesses of this system. Beyond that, we are dedicated to go into the whole concept of retirement, and I have got a bill that would not make any further adjustments for cost-of-living, as you know, because adjustments would be based on the difference of earnings, a pension system managed on a private basis by employees themselves. That would stop this problem about adjustments through retirement COLA's.

But the reason that they are going to be capped, in my opinion, and I think they will be by the Congress this year, is because of the stories we have heard of the excesses, the Hastings Keith example. The public knows those. We have got to draw the line and say there can't be any more of those because those are in and of themselves destroying confidence in the system. And I am surprised actually—you have your right to represent your group—I am surprised your organization doesn't realize the underlying effect of the Hastings Keith-Speaker McCormack type of action on the retirement system itself.

Mr. COSGROVE. Senator, I think that two points, if I may, in reply to your observations. Certainly I agree you and the members of this committee have a knowledge and sensitivity that is reassuring in dealing with this. We are conscious of Senator Mattingly's good faith interest in this question. We are also in a peculiar position, I might say, happily, of once agreeing with OPM with regard to some of the difficulties in this bill.

On the substance of your comments, though, I would have to return to the problem that we have continually avoided one thing—the intent of the Comparability Act so the salaries of the GS would have risen to a level competitive to private industry, which was the original intent of the act, to permit the alternate pay plan which has been too consistently employed, a result which has kept down wages, and this has been particularly egregious at the upper levels where I believe down through the level of GS–15 there has been a cap of some $50,000. The result of this has been a great disincentive for people to stay in. They are better (a) out on retirement or (b) getting private sector employment.

Senator STEVENS. That is true; that is the reverse of these figures. If the pay for the person who is going to retire this year in my example has been adjusted on the same basis as the COLA's

which impact the retired employee, that salary base of $57,500 would probably be somewhere around $75,000 or $80,000. But the difference is the budget couldn't take it. And now we are seeing the impact of the budget not being able to take further adjustments in COLA's. In 1 year alone of freezing COLA's for both those employed and those retired, civilian and military, 1 year of 4 percent, the difference between 0 and 4, the cumulative effect over 3 years, we figured it out last night, is $15,600,000,000. One year, freezing for 1 year and picking up 4 percent again in 1983 and 1984. But for the fiscal year 1983 alone, a freeze instead of a 4-percent adjustment, because of the cumulative effect in outyears, is $15,600,000,000.

Mr. COSGROVE. Mr. Chairman, doesn't that move back to the question one-circle removed here, namely, the degree of fighting inflation and controlling the deficit that is to be borne by the Federal employee?

Senator MATTINGLY. That is not so.

Mr. COSGROVE. Do you think we should carry the burden so much?

Senator STEVENS. The difference is the retired civil servant and retired military have not had to sacrifice like those working have had to because of the caps placed on them by Congress. This is the difficulty and the need for a symbol now to at least say there are not going to be any excesses coming out of the retirement system under the COLA. That is what the Senator's bill would do, send a signal that we are going to stop the excesses.

Senator MATTINGLY. I would like to speak to one point. You talk about bearing the burden. That is not so. What this bill is intended to do is stop excess payments. Your statement that the Federal employees are taking the burden of fighting inflation to balance the budget is not so. Go to the private sector and see what is going on. Don't tell me the people in the private sector, the General Motors' and Chrysler's and Ford's employees and other people who are trying to have contracts made this year, are not also undergoing burdens. This bill is not a burden. It is what the General Motors' employee can bear or what anybody else can bear. They are maintaining jobs. It is a whole lot better for General Motors to negotiate a contract that keeps plants open at a lesser wage increase. And you talk about lag time in your comment here. The lag time of COLA's is working in favor now of Federal employees. It is not working in favor of the people in the private sector.

Mr. COSGROVE. Senator, I think the difference, if I may reply, in the private sector and public sector is the private sector simply hasn't got the majesty of the Government that can impose, without legislation, the pay freeze, which in fact it has done. There was a time when President Carter wrote the mayors of all the large cities, the Governors of all the States, to freeze public employee wages. and at the same time imposed on Federal workers for some months a direct wage and salary freeze, so that the public employee is in a very distinct, unique position.

Senator STEVENS. Mr. Cosgrove, I have to go chair another hearing. I do hope your association will join in sending out a signal that there are not going to be examples that can be quoted to us that would destroy the support for the retirement system. That is all we

are looking at right now; that is, how to draw the line and say there are not going to be excesses. Then we are going to look at the general reformation of the retirement system.

Mr. COSGROVE. Senator, our only interest is in equity for the workers, and I think we share that in large degree.

Senator STEVENS. Thank you very much.

Senator MATTINGLY. Let me ask you one other question. You made one comment that the annuitants were not in a position to supplement their incomes. Do you have any idea of the number of former employees of the Federal Government that collect other forms of retirement?

Mr. COSGROVE. No, sir.

Senator MATTINGLY. Sixty-eight percent of all civil servants retired, 65 years of age, are also collecting social security. When we say there is a large portion of them not being able to supplement their income, a large number did go to the private sector.

Mr. COSGROVE. Are you saying they are getting social security benefits or they are working in the private sector?

Senator MATTINGLY. Are also collecting social security benefits, 68 percent. I don't begrudge them. I am saying it as a matter of fact.

Mr. COSGROVE. I would say it should not be begrudging. If they qualified under the law, in our judgment they are entitled to that.

Senator STEVENS. I don't have the figures, but most people who have a pension also qualify for social security.

[The prepared statement of Mr. Cosgrove follows:]

FAIR
FUND FOR ASSURING AN INDEPENDENT RETIREMENT

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Jerry Klepner, Treasurer
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John J. Sweeney, President
Service Employees International Union
Maurice J. Toomey, Vice-President
National Association of Postal Supervisors
Wilbur Wood, President
National Rural Letter Carriers Association

TESTIMONY BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
BY THE
FUND FOR ASSURING AN INDEPENDENT RETIREMENT
MAY 20, 1982

We appreciate the opportunity to testify on S. 1380 because it would, if enacted, affect the members of the twenty-five national organizations which comprise our coalition, FAIR. Most of the public officials and employees in these organizations work -- or did work -- for the federal government or the U.S. Postal Service. I am John E. Cosgrove, Chairman of the Board of Directors of FAIR.

The stated purpose of this bill has a prima facie equity: " . . . to ensure that Civil Service retirees do not receive annuities which are in excess of the salaries received by individuals working in the positions from which the retirees were retired." There are, however, several considerations which militate against this first impression. Firstly, the annuitant is not on an equal footing with the present occupant of his or her previous position; in most of the cases, the annuitant has worked far longer and so a more substantial compensation is not unreasonable. Secondly, many annuitants are not in a position to supplement their income, as readily, with outside employment.

The history of federal annuitants' cost-of-living adjustments bears also on this question: It is one of the most targeted of the labor standards or employment conditions of federal workers.

Realizing that COLAs, by definition, follow inflation, Congress some years ago provided a 1-1/2¢ add-on, or "kicker," to COLAs to compensate for the lag time between the actual raise in the costs of living and the adjustment in the annuity. As the pressure against public employees mounted, Congress repealed this benefit, but instituted -- apparently as a substitute -- a twice-a-year COLA. Then, perhaps since this too was a benefit, Congress, in the reconciliation process in the budget legislation, last year, eliminated even this -- and returned to the once-a-year COLA, without restoring the "add-on."

This is only the sad history. Right now, the Senate Budget Committee has voted to freeze federal pay raises this year -- which of course affects federal annuities -- recognizing that compliance with pay comparability is more the exception than the rule. In addition, the Senate Budget Committee recommends deferment of the next COLA (March 1983) for one year.

Not to be inactive in curbing comparability, the House Budget Committee would grant only a four percent pay raise in October, for this year, but allow the March 1983 annuity adjustment -- at four percent, to apply through March 1985. Interestingly, veterans and railroad retirement would not be so capped -- under the House plan. It seems, and happily, that Social Security beneficiaries' COLA is to be left undisturbed for this year.

Against this background you can understand the resistance of employee-annuity groups to further tampering with the CSRS and its COLA component, which almost inevitably leads, as would this bill, to the diminution of benefits for many people.

Congress should make no cuts in either the Social Security system or the Civil Service retirement program. Contrary to what many detractors of the system contend, the average annuity under Civil Service retirement is about $10,000 per year, not very much when one considers that the latest Department of Labor statistics indicate that the poverty level for an urban family of four is now $9,200. Since federal retirees have seen an erosion of their benefits, we believe that any further reductions would be grossly unfair.

We believe that the federal employee and annuitant has been unfairly targeted over the last several years, to carry the burden of the nation's economic difficulties from the current recession through the continuing inflation. While we want to do our part, this part has become very large indeed.

The Civil Service Retirement System, and its equity and its financial situation, is well based. Any adjustments to it should be undertaken only after the most careful, thorough consideration of all the implications. We suggest that S. 1380 does not provide for this and, accordingly, we urge its rejection by this Subcommittee.

Thank you.

Senator STEVENS. The committee will stand in recess. Thank you very much.

[Whereupon, at 10:05 a.m., the subcommittee recessed, to reconvene subject to call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

97TH CONGRESS
1ST SESSION

S. 1380

To amend title 5 of the United States Code to insure that civil service retirees do not receive annuities which are in excess of the salaries received by individuals working in the positions from which the retirees were retired.

IN THE SENATE OF THE UNITED STATES

JUNE 17 (legislative day, JUNE 1), 1981

Mr. MATTINGLY introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5 of the United States Code to insure that civil service retirees do not receive annuities which are in excess of the salaries received by individuals working in the positions from which the retirees were retired.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8340 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(g)(1) An annuity shall not be increased by reason of any adjustment under this section to a level which is in

96-085 O—82——4

excess of the maximum permissible amount determined for such annuity at the time of such adjustment.

"(2) For purposes of this subsection, the maximum permissible amount shall be—

"(A) in the case of an annuity which commences before March 1, 1981, the lesser of—

"(i) the final pay (or average pay, if higher) of the employee or Member, increased by the cumulative average increase in rates of pay of the General Schedule under section 5332 of this title during the period between the date the annuity commenced (or, in the case of a survivor of a retired employee or Member, the date the employee's or Member's annuity commenced) and the date of the adjustment under this section; or

"(ii) the rate of pay paid on the date of the adjustment under this section for GS–18 of the General Schedule under section 5332 of this title (or, if higher, the rate of pay paid on the date of the adjustment under this section for the last office or position (or equivalent thereof) held by the employee or Member), and

"(B) in the case of an annuity which commences on or after March 1, 1981, an amount equal to the product of—

"(i) the percentage determined under section 8339 of this title in computing the employee's or Member's annuity, multiplied by

"(ii) the current maximum rate of pay for the highest General Schedule, Executive Schedule, or Senior Executive Service position (or, if the highest position was not one of such positions, the level of the General Schedule, Executive Schedule, or Senior Executive Service Schedule determined by the Office in its sole discretion to be equivalent to the highest position) held by the employee or Member for at least 6 months during the period on which the employee's or Member's average pay is based.

"(3) The Office shall prescribe regulations for the application of this section for an annuitant who becomes employed in an elective or appointive position. Such regulations shall provide that any additional annuity shall be added to his initial annuity for purposes of applying this section.".

(b) The amendment made by this section shall take effect at such time as the Director of the Office of Personnel Management shall determine, but not later than 180 days after the date of the enactment of this Act, except that no annuity shall be reduced by reason of such amendment below

the amount payable on the day before such amendment takes effect.

United States
Office of
Personnel Management
Washington, D.C. 20415

APR 28 1982

In Reply Refer To

Your Reference

Honorable George Bush
President of the Senate

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal, "To amend title 5, United States Code, to limit Civil Service Retirement cost-of-living adjustments, to eliminate wasteful and unnecessary provisions of the Civil Service Retirement System, to improve the administration of that System, and for other purposes."

This proposal is part of the President's effort to restrain the growth in Federal expenditures and improve Government operations. We request that you refer this proposal to the appropriate committee for early consideration.

Major provisions of this legislation are intended to curb the excessively generous adjustments of Civil Service annuities that have occurred under current and prior law, and thereby ensure that Federal retirees do not receive annuity benefits that are disproportionate to the compensation of current Federal employees.

First, the proposal would limit Civil Service Retirement cost-of-living adjustments (COLA's) to the lesser of the increase in the Consumer Price Index or the increase in General Schedule pay. Second, in order to rectify excessively generous adjustments granted to certain annuitants in the past, the proposal would hold down future COLA's to these annuitants.

Identical COLA provisions would be effected by Executive order for the Foreign Service and Central Intelligence Agency Retirement Systems upon enactment of this bill.

Other provisions of this legislation are designed to eliminate some of the inconsistencies that inevitably result from the piecemeal growth and development that have occurred in the Civil Service Retirement System over the last sixty years. The bill also would provide the administrative control necessary to better insure the integrity of the program while achieving overall personnel management objectives.

This proposal also includes specific amendments designed to improve the operation of the disability retirement program, the collection of money due the Retirement Fund, the procedures for determining and paying lump-sum death benefits and survivor annuities, and the procedures governing deposits, refunds, and redeposits. Other provisions would eliminate

a possibility of paying benefits for a period of service for which benefits are payable under another system, alter the method of computing annuities based on part-time service, reduce service credit for leave without pay, eliminate the minimum annuity provision for future beneficiaries, discontinue survivor benefits for post-secondary school students age 18 or over, establish new procedures for determining the interest rate used in the System, alter the rounding method used in computing monthly annuities, revise the commencing dates of annuities so that benefits would be payable only for full months, and authorize the waiver of certain procedural requirements when equity and good conscience so dictate. These features would significantly help both in avoiding abuses and in dealing with them if they should occur.

We estimate that, primarily as a result of the COLA provisions, the proposal would produce the following savings in Government outlays for Civil Service Retirement:

Fiscal Year 1982	$ 23.5 million
Fiscal Year 1983	489.0 million
Fiscal Year 1984	1,099.0 million
Fiscal Year 1985	1,458.0 million
Fiscal Year 1986	1,710.0 million
Fiscal Year 1987	1,910.0 million
1982-87 total	$5,590.5 million

We believe this proposal is especially important in that it represents our commitment to improving the administration of the Civil Service Retirement System while at the same time eliminating unnecessary and unwarranted expenditures. In so doing, we hope to ensure further that the System efficiently and equitably serves Federal employees and their survivors.

The Office of Management and Budget advises that enactment of this proposal would be in accord with the program of the President.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely yours,

Donald J. Devine
Director

Enclosures

STATEMENT OF PURPOSE AND JUSTIFICATION

To accompany a draft bill

"To amend title 5, United States Code, to limit Civil Service Retirement cost-of-living adjustments, to eliminate wasteful and unnecessary provisions of the Civil Service Retirement System, to improve the administration of that System, and for other purposes."

Cost-of-Living Adjustment

Two key provisions of the bill are intended to curb the excessively generous adjustments of Civil Service annuities that have occurred under current and prior law, and thereby ensure that Federal retirees do not receive annuity benefits that are disproportionate to the compensation of current Federal employees.

First, the proposal would limit Civil Service Retirement cost-of-living adjustments (COLA's) to the lesser of the increase in the Consumer Price Index or the increase in General Schedule pay. Second, in order to rectify excessively generous adjustments granted to certain annuitants in the past, the proposal would hold down future COLA's to these annuitants.

We estimate that the COLA provisions of the bill would result in the following savings in Government outlays for Civil Service Retirement annuities:

Fiscal Year 1983	$ 385 million
Fiscal Year 1984	963 million
Fiscal year 1985	1,298 million
Fiscal year 1986	1,526 million
Fiscal Year 1987	1,703 million
1983-87 total	$5,875 million

Other Provisions

In addition, this proposal contains a number of provisions which are designed to eliminate some of the inconsistencies that inevitably result from the piecemeal growth and development of the Civil Service Retirement System over the last sixty years. It also would provide the administrative control necessary to better ensure the integrity of the program, while achieving overall personnel management objectives. These features would reduce outlays by $23.5 million in fiscal year 1982 (assuming a July 1, 1982 effective date for certain provisions), by $104 million in fiscal year 1983, and by an additional total of $687 million in the four succeeding fiscal years.

Unwarranted Service Credit

Section 3582(a)(1) of title 5, United States Code, allows an employee who transfers to an international organization to continue coverage under the Civil Service Retirement System, but only if he is not covered under any retirement system of the international organization. However, a now-outdated provision of law provides different treatment for employees who transfer to the Pan American Sanitary Bureau. Currently, an individual

may receive a benefit under the United Nations Joint Pension Fund based on a period of service with the Bureau and still receive credit under our system for the same period of service. By eliminating from the retirement law the specific service credit provision covering the Bureau, Federal employees who transfer to the Bureau will be subject to the same provisions governing creditability of service as Federal employees who transfer to other international organizations, and will receive Civil Service Retirement credit only if they forgo the duplicative pension coverage under the UN system.

Another revision involves the crediting of part-time service. Currently, part-time employees receive full service credit for their service, while having their salaries prorated in computing their annuities. Those who work part-time for a whole career receive an appropriately proportional annuity. However, if at the end of a long part-time career an employee changes to a full-time schedule for his last three years, the disproportionate increase in the average salary produces an annuity equal to that received by an employee who worked full-time for an entire career. The proposal would eliminate that possibility of abuse by amending the law to provide that, for an individual first employed after December 31, 1982, for annuity computation purposes only, service credit will be given in the proportion that the part-time service bears to a full-time tour of duty, with the average pay determined on the basis of the full annualized rate of pay for the individual's position. Computations involving the guaranteed minimum annuity for air traffic controllers, disability retirement, and the limitation on initial annuity payments of 80 percent of average pay would be excepted from the new provision. There would be no effect on the benefits of full-time employees, and employees who work a consistent part-time tour would be affected only minimally. Employees of the Department of Medicine and Surgery of the Veterans' Administration are already subject to a similar provision, under Public Law 97-72.

Also, under the proposal, except where specifically authorized by law, service credit would not be given for any leave without pay which occurs after enactment and which exceeds thirty days in a calendar year. Under current law, up to six months of leave without pay per calendar year is creditable as service. Limiting this "free" credit will provide long-term cost savings.

Collection of Funds Due

Another area in which improvement is sought is the collection of money due the Civil Service Retirement and Disability Fund. The proposal would require offsetting from a back pay award and repayment to a Federal employee retirement system, on correction of an unjustified or unwarranted personnel action, of monies paid from the retirement system as a result of that action. Currently, the law does not specifically authorize offsetting from a back pay award, once an improperly separated employee has been retroactively restored to the employment rolls, any retirement benefits paid to that employee during the erroneous separation.

Another section of the proposal would require agencies to make deposits, with interest, of both agency and employee contributions when the agencies have erroneously failed to make such deposits on time. This would provide an express statement of the obligation of an agency which has erroneously contributed to the Social Security System on behalf of an employee, or which has made no contribution at all, to nonetheless make the correct deposit to the Retirement Fund. It is estimated that, if this proposal is enacted, in fiscal year 1983 the Retirement Fund will receive $4.3 million as reimbursement for what it would have earned in interest had the missing or late payments been made on time by the agencies. Government receipts would be increased slightly by this change, since approximately $200,000 in interest would be payable by off-budget agencies such as the Postal Service and the D.C. government, due to missing and late payments for the coverage of their employees under the Retirement System.

As an additional tool in recovering money due the Fund, the proposal would expressly require the recoupment of an overpayment to an annuitant by reducing subsequent annuity payments. However, if the overpayment was not the fault of the recipient and if recovery would be contrary to equity and good conscience, recovery could be waived. Should an individual who received an overpayment cease to be entitled to benefits before recovery is completed, recovery would be made by decreasing benefits payable to any other individual, such as another family member, which are attributable to the service of the same employee. Here again, recovery could be waived if the overpayment was not the fault of the individual and if recovery would be against equity and good conscience.

Disability Retirement

The proposal would make a number of improvements in the Civil Service disability retirement program. First, it would prohibit employees who are eligible to retire voluntarily from retiring on disability. The program currently permits employees to retire on disability even if they are eligible for optional retirement. The disability provisions of the Civil Service Retirement System are intended to provide for those employees whose disabilities prevent them from completing the service requirements for voluntary retirement. Since individuals who have satisfied the service requirements for voluntary retirement would receive the same annuity rate irrespective of the provisions under which they retired (disability or voluntary), there appears to be no compelling need for permitting these individuals to elect disability rather than voluntary retirement. Accordingly, the proposal would eliminate the election and permit only optional retirement in these cases.

Another significant change in the disability retirement program is the establishment of a requirement for terminating a disability annuity upon a finding of Federal employability. Currently, before an employee may be retired for disability, the employing agency must make an effort to reassign the employee to a vacant position in the agency which is at the same grade or level and in which the employee can perform useful and efficient service. There is, however, no requirement that similar employability concerns be addressed after the individual has retired on

disability. The proposal would specify, for the first time, that if the Office of Personnel Management finds, through medical examination or other appropriate information, examination, or evaluation (such as evidence concerning outside employment or other activity) that the individual is qualified for and able to render useful and efficient service in a Federal position at the same grade or level as, or one equivalent to, the position from which retired, and an offer of employment in such a position is made, the disability annuity is terminated. Thus, the same test of employability would be applied in determining whether a disability annuity should be granted and whether such an annuity should be continued.

The third major change made by the proposal in the disability area concerns the test for restoration to earning capacity. The law now provides that a disability annuitant is considered restored to earning capacity (resulting in termination of the annuity) if, in each of two successive calendar years, the annuitant's earnings from wages, self-employment, or both, exceed 80 percent of the current salary of the position from which retired. No other income, including interest, dividends, bonds, pensions, or annuities, is considered in determining restoration to earning capacity. Even if the annuity is discontinued because of excessive earnings, however, the annuity is reinstated if the earnings fall below the 80 percent limitation during a subsequent calendar year. While the majority of disability retirees report no income from wages or self-employment, the present system would allow disability annuitants to manipulate their earnings to exceed the 80 percent level one year and fall below that level the next year. By changing the test period for restoration to earning capacity from two years to one year, and shortening the grace period following restoration from 1 year to 3 months, the proposal would make manipulation more difficult, while protecting the interests of annuitants who are able to work for short periods or who derive windfall earnings over the short term, but are unable to pursue sustained employment.

As a fourth change in the disability area, the provisions of law concerning recovery from disability and restoration to earning capacity would be modified to make clear that disability annuitants age 60 or older, like younger disability annuitants under current law, could seek to demonstrate their recovery or restoration to earning capacity, thereby terminating their annuities and allowing them to be reemployed in the Government without being in the special status of reemployed annuitants, where employment may be terminated at the will of the employing agency. These changes are intended to conform the law to the interpretation given it in the recent decision in the case of Moysey v. Andrus, 481 F. Supp. 850 (D.D.C. 1979).

These changes, taken together, are expected to significantly increase the number of people leaving the disability retirement roll. Currently, there are about 1,150 individuals each year who leave the disability roll, out of a population of 343,000 on that roll. If this were to double starting in fiscal year 1982 (assuming a July 1, 1982 effective date), it is estimated that the total accumulated savings in outlays would be $1.5 million the first year, $6 million in fiscal year 1983, and $150 million over the following four years.

Survivor Benefits

Several of the proposed amendments would establish new and more consistent procedures governing lump-sum death benefits and survivor annuities. For example, one portion of the proposal would standardize the length-of-marriage requirement imposed to deter "death-bed marriages" at 9 months, the same as under the Social Security System. The existing Civil Service Retirement law inconsistently imposes a one-year requirement for marriages which occur after retirement and in cases involving death in service, while imposing no requirement at all where a marriage exists at the time of retirement.

As a related matter, another part of the proposal would deem the marriage requirement for receipt of survivor benefits satisfied in cases of accidental death or in cases involving remarriage in which the aggregate time married is at least 9 months. This provision is also similar to that contained in the Social Security law.

The proposal would provide uniformity in the methods of determining annuity termination dates for retired employees or Members and for survivor annuitants. The law currently provides that annuities of retirees cease on the day death or other terminating event occurs, while the annuities of survivors terminate on the last day of the month before death or other terminating event occurs. Under the proposal, annuities of retirees would terminate on the last day of the month before death or other terminating event occurs, the same as survivor annuities. This change will reduce outlays by $3 million the first year (assuming a July 1, 1982 effective date), $10 million in fiscal year 1983, and $51 million over the following four years.

Survivor benefits which are now payable to young adults between ages 18 and 22 who are full-time students in post-secondary schools would be eliminated by the proposal. Benefits for secondary school students will be payable until completion of secondary school or age 19, whichever occurs first. These changes are consistent with those made to the Social Security program by the Omnibus Budget Reconciliation Act of 1981, and are designed to eliminate from the retirement program the responsibility for providing post-secondary educational assistance. Any disruption for current recipients will be minimized by phasing out the program over a four-year period. The savings in outlays are expected to be $14 million in the first year (assuming a July 1, 1982 effective date), $53 million in fiscal year 1983, and $284 million over the following four years.

Deposits, Refunds, Redeposits, and Interest Rates

Under current law, individuals who have periods of creditable service for which no retirement deductions have been taken receive full credit for the service, but have their annuities reduced by 10 percent of the deposit that would be payable for their service unless they choose to make the deposit. Since the service credit is generally far more valuable than the 10 percent annuity reduction, this provision in current law is unnecessarily costly to the Retirement System. Under the proposal, deposits covering

such periods would generally be required in order for retirement credit to be granted for annuity computation purposes. Individuals now on the annuity rolls would not be affected, and the change would be applicable only to annuities which commence on or after the effective date. Certain types of service for which credit is intentionally provided without an employee contribution (e.g., military service, periods of internment of Japanese-Americans) would not be affected by the proposal.

The provisions of the Retirement law governing refunds from and redeposits to the Fund would be substantially revised by the proposal.

The proposal would eliminate a loophole in the requirement that an individual must have served for at least one year out of the last two in a covered position in order to retire (other than in the case of disability). This requirement is intended to prevent an individual from seeking covered employment for a nominal period merely in order to obtain an annuity. However, under existing law, an employee who separates and takes a refund may return to work for only a brief period, immediately make a redeposit, and reacquire the right to an annuity based on the previous service, thereby circumventing the "one-out-of-two" requirement. The proposal would correct this situation by clearly establishing that only an individual who has met this service requirement may redeposit refunded contributions.

The proposal would allow employees who wish to make deposits or redeposits of refunded deductions to do so on an installment basis. Current law requires that deposits or redeposits be completed before the annuity commences. This amendment would maintain consistency with the basic premises of a career retirement system by making it easier for an employee to include all Federal service in the annuity computation, while adequately protecting the integrity of the Fund by charging interest until the deposit or redeposit is completed.

The proposal would statutorily impose a 31-day minimum separation requirement before an individual could receive a refund of retirement deductions. This would prevent an individual from arranging a nominal separation in order to "borrow" from the Fund. This 31-day requirement is now imposed administratively, but we would prefer to have a clear statutory basis for this requirement.

The proposal contemplates a major restructuring of the method of determining the interest rate used in numerous operations under the Civil Service Retirement System. The proposal would accomplish this by providing a new mechanism for annually establishing the interest rate used in determining the amount to an individual's credit in the Fund, the amount of each deposit necessary to cover previous civilian service for which no deductions were taken, and the amount of redeposit necessary to cover a previous refund of deductions. A grace period would be provided to permit individuals to make deposits and redeposits at the existing interest rate through December 31, 1983. In addition, the interest rate would be used in determining the amount accrued in voluntary contribution accounts, and any excess deductions taken after an individual has performed sufficient service to qualify for the maximum annuity would accrue interest at that rate. The current un-

realistically low rate of 3 percent has been used for these purposes in the System since 1948. The new approach would require yearly determination of the rate of interest, on the basis of the average yield on the Government securities in which the Fund is invested, and would produce, at least initially, a higher rate than currently prevails. In all likelihood, this change would not only constitute a disincentive to delaying deposits until the time of retirement, but would also serve to make refunds of retirement deductions less attractive transactions for individuals who arrange short breaks in service in order to qualify for refunds. It is estimated that, if the interest rate were increased to 12 percent from its current level of 3 percent, the total additional interest income would be $3.3 million per year.

The proposal would require that, in order for an air traffic controller to be eligible for the special guaranteed minimum annuity of 50 percent of the controller's average pay, there could not be any unpaid deposits or refunds of retirement deductions which have not been repaid. Currently, the law can be interpreted to mandate payment of the minimum 50 percent without regard to any unpaid deposits or refunds which the employee may have received.

Elimination of Minimum Annuity

Under current law, a minimum annuity equal to the minimum Social Security benefit is paid to any annuitant whose annuity would otherwise be less than that and who is not receiving any other Federal retirement benefit, including Social Security, military retired pay or survivor's benefits, or veterans' compensation, which exceeds the Social Security minimum. With the elimination of the minimum Social Security benefit for new recipients, consistency demands that the parallel minimum benefit under the Civil Service Retirement System also be eliminated for annuitants whose annuities commence after enactment. Low annuities under the retirement program reflect brief service, low salaries, or both, and the recipients are not generally dependent solely on Civil Service Retirement benefits for support.

Administrative Authority and Technical Changes

The proposal would grant the Office of Personnel Management additional administrative authority to waive, in the interest of equity and good conscience, procedural requirements in the retirement program which relate to the timeliness of submission. This waiver authority will not only provide the flexibility necessary to ensure fairness in the retirement program, but should also reduce the number of requests for private relief legislation to deem requirements satisfied.

Another proposed amendment would improve administrative control by obligating individuals to furnish information which is necessary to administer the retirement program and by authorizing the Office of Personnel Management to suspend or deny an annuity when the annuitant or applicant fails to report. Currently, there is no explicit mandate

to institute reporting requirements and impose sanctions for noncompliance. Since the authority is designed for use only in facilitating retirement operations, information will not be collected unless it is required for a retirement-related purpose. An example of an appropriate use is the solicitation of information on wages or self-employment income of disability annuitants for the purpose of determining whether they have been restored to earning capacity.

The proposal also contains some technical changes. One such change would alter the commencing dates of annuities so that benefits would be payable for full months only. A retiring employee or Member or the survivor of a deceased employee or Member would receive an annuity beginning on the first day of the month after separation or death. A survivor of a deceased annuitant would receive an annuity which commences on the first day of the month in which the annuitant died. It is estimated that these changes will reduce outlays in fiscal year 1982 by $5 million (assuming a July 1, 1982 effective date), in fiscal year 1983 by $24 million, and in the four fiscal years which follow by a total of $156 million.

An additional technical change would amend the law to uniformly round down to the next lowest whole dollar in computing the amount of the monthly annuity, both initially and after cost-of-living adjustments. The law now provides for rounding to the nearest whole dollar. The amendment is designed to maintain consistency with changes being proposed for other Federal benefit programs, and while it would reduce outlays in fiscal year 1982 (assuming a July 1, 1982 effective date), by only a nominal amount, it is expected to provide reductions in fiscal year 1983 of $11 million, and in the four succeeding fiscal years by a total of $46 million.

A BILL

To amend title 5, United States Code, to limit Civil Service Retirement cost-of-living adjustments, to eliminate wasteful and unnecessary provisions of the Civil Service Retirement System, to improve the administration of that System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Service Retirement Amendments of 1982".

Sec. 2. Title 5, United States Code, is amended--

(1) in section 5596(b)(1)(A)(i) by striking out "; and" at the end thereof and inserting in lieu thereof ", and other amounts paid to the employee by a Federal employee retirement system as a result of the unjustified or unwarranted personnel action, which other amounts shall be returned instead to the appropriate system; and";

(2) by amending section 8331(8)(C) to read as follows:

"(C) interest on the deductions and deposits in the appropriate amount provided under section 8334(e) of this title, compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred before completing 5 years of civilian service to a position in which the employee or Member does not continue to be subject to this subchapter, to the date of the separation or transfer;";

(3) in section 8332--

(A) by repealing subsection (b)(2);

(B) in subsection (b)(3), (8), (9), and (11) by striking out "sections 8334(c) and 8339(i)" each time that phrase appears and inserting in lieu thereof "section 8334(c)"; and

(C) in subsection (f) by striking out "6 months" and inserting in lieu thereof "30 days";

(4) in section 8333 by adding at the end thereof the following new subsection:

"(d) In meeting the requirements in subsections (a) and (b) of this section, all leaves of absence without pay not exceeding 6 months in the aggregate in a calendar year may be used.";

(5) in section 8334—

(A) in subsection (a)(2) by adding at the end thereof the following:

"An employing agency which fails to deposit, in the correct amount, or at the correct time, deductions, contributions, or both, to the credit of the Fund shall deposit the appropriate amount including interest computed under subsection (e) of this section from the time the deposit should have been made.";

(B) in subsection (c) by striking out "deposit" and inserting in lieu thereof "receive credit for such service for the purposes of section 8339 of this title, in accordance with regulations prescribed by the O. :e of Personnel Management, only after depositing";

(C) by amending subsection (d) to read as follows:

"(d)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system for employees of the Government covering service for which the employee or Member may be allowed credit under this subchapter may deposit the amount received, with interest, if the employee or Member has performed subsequent service which meets the service requirement in section 8333(b) of this title, and if retirement deductions under

this section for such subsequent service are unrefunded. Credit for the service covered by the refund shall be granted in accordance with paragraph (2) of this subsection and regulations prescribed by the Office of Personnel Management.

"(2)(A) An employee or Member who has not, prior to the date of retirement, paid all deposits in accordance with subsection (c) of this section or deposited with interest all refunds received in accordance with the provisions of section 8342 of this title may irrevocably elect, at the time of retirement, to have the Office of Personnel Management withhold from monthly annuity payments either the entire amount of the annuity or such smaller amount as the Office may authorize, to be applied to the payment of either the deposits, the refunds, or both. Such withholding shall continue until the payment of the appropriate amounts plus interest has been completed, or until the death of the annuitant. Credit for periods of service covered by such payments may not be allowed for the purposes of section 8339 of this title, except to the extent permitted under standards prescribed by the Office. Interest on payments due after retirement shall accrue at the rate provided under subsection (e) of this section as of the commencing date of the annuity.

"(B) If an employee or Member dies before completing installment payments, a survivor may discontinue or revise the installment payments in accordance with regulations prescribed by the Office of Personnel Management, and the amount of annuity otherwise due shall be adjusted in accordance with standards prescribed by the Office."; and

(D) by amending subsection (e) to read as follows:

"(e)(1) Interest under sections 8331(8) and 8343(a) of this title and under subsections (c) and (d) of this section is computed in accordance with paragraphs (2) and (3) of this subsection and regulations prescribed by the Office of Personnel Management.

"(2) Interest is computed and compounded annually at the rate of 4 percent (3 percent under section 8343(a) of this title) a year through December 31, 1947, and 3 percent a year beginning January 1, 1948, through December 31, 1983. Thereafter, the rate of interest shall be established for each calendar year by December 31 of the preceding year by the Office of Personnel Management, to be equal to the average yield for the preceding fiscal year on obligations in which the Civil Service Retirement and Disability Fund was invested.

"(3) Deposits may be made in one or more installments. Interest continues to accrue on the outstanding portion of a deposit due under subsection (c) or (d) of this section until the deposit is completed.";

(6) in section 8337—

(A) in subsection (a) by striking out "application" the first time it appears and inserting in lieu thereof "application, provided that the employee is not eligible for immediate retirement under subsection (a), (b), (c), (e), or (f) of section 8336 of this title,";

(B) by amending subsection (d) to read as follows:

"(d)(1) If, before becoming 60 years of age, an annuitant who is receiving a disability retirement annuity from the Fund is found by the Office of Personnel Management, through medical examination

or other appropriate information, examination, or evaluation, to be--

"(A) recovered from disability; or

"(B) qualified for and able to render useful and efficient service in a position which he has been offered in the executive, legislative, or judicial branch, at the same grade or level as, or an equivalent grade or level to, the grade or level of the position from which he separated for disability retirement;

payment of the annuity shall terminate on reemployment by the Government or 1 year after the date of a finding of recovery or employability under this subsection, whichever is earlier.

"(2) If, before becoming 60 years of age, an annuitant who is receiving a disability annuity from the Fund is restored to an earning capacity fairly comparable to the current rate of pay that would be payable if the annuitant had remained at the same step or relative rank in the position occupied immediately before retirement, payment of the annuity terminates on reemployment by the Government or 3 months after a finding that earning capacity has been restored, whichever is earlier. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals 80 percent of the current rate of pay that would be payable if the annuitant had remained at the same step or relative rank in the position occupied immediately before retirement.

"(3) An annuitant who is receiving a disability retirement

annuity from the Fund and who has attained age 60 may request a medical examination or other examination or evaluation or a review of earnings information for the purpose of demonstrating recovery from disability or restoration to earning capacity, respectively. The annuity of an individual who so demonstrates recovery or restoration shall be terminated as provided by paragraphs (1) and (2) of this subsection for individuals who have not attained age 60."; and

(C) in subsection (e)--

(i) by striking out "finding" and inserting in lieu thereof "or other finding"; and

(ii) by striking out "medical examination showing a" and inserting in lieu thereof "a finding of";

(7) in section 8339--

(A) in subsection (e)--

(i) by striking out the period at the end thereof and inserting in lieu thereof a comma;

(ii) by adding at the end thereof the following: ", unless the amount of any unpaid deposit or refund of retirement deductions received by the employee is not deposited, with interest, in accordance with section 8334 of this title, in which case the annuity is computed under subsection (a) of this section.";

(B) in subsections (f) and (j)-(1) by striking out "(o)" wherever it appears and inserting in lieu thereof "(n)";

(C) by repealing subsection (i); and

(D) by adding at the end thereof the following new subsection:

"(o) Notwithstanding sections 8331(4) and 8332(a) of this title, in computing, under this section, the annuity of an individual who first becomes an employee after December 31, 1982, and who performs service on less than a full-time basis, such service shall be credited on a proportionate basis equal to the fraction that such service bears to full-time service, and the annual rate of basic pay that would be payable for full-time service in the position shall be deemed to be the rate of basic pay. This subsection does not apply to computations made under the second sentence of subsection (e) of this section or under subsection (f) or (g) of this section.";

(8) in section 8340—

(A) by amending subsection (b) to read as follows:

"(b)(1) Except as provided in subsections (b)(2) and (c) of this section, effective March 1 of each year, each annuity payable from the Fund on that date shall be increased by the lesser of—

"(A) the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year (adjusted to the nearest 1/10 of 1 percent); or

"(B) the overall average percentage (as set forth in the report transmitted to Congress under section 5305 of this title) of the most recent adjustment in the rates of pay of the General Schedule (adjusted to the nearest 1/10 of 1 percent).

"(2) Notwithstanding subsection (b)(1) of this section, each annuity payable from the Fund prior to the effective date of this subsection shall be adjusted subsequent to the enactment of this subsection only to the extent prescribed as follows:

"(A) At the time of each adjustment under subsection (b)(1) of this section, the Office of Personnel Management shall determine, for each date on which an annuity subject to this section commenced--

"(i) the cumulative average percentage increase that has been made to annuities commencing on such date under prior provisions of law increasing annuities commencing on such date, up to but not including the adjustment in question under subsection (b)(1) of this section, and

"(ii) the cumulative average percentage increase in General Schedule rates of basic pay from such commencing date up to but not including the adjustment in question under subsection (b)(1) of this section.

"(B) In the case of each annuity that is subject to this subsection and that has a commencing date for which the percentage determined under paragraph (2)(A)(i) of this subsection is less than the percentage determined under paragraph (2)(A)(ii) of this subsection, the annuity shall be increased by--

"(i) such portion of the adjustment under subsection (b)(1) of this section as does not, when stated as an average percentage increase and included in the percentage determined for such commencing date under paragraph (2)(A)(i) of this subsection, cause

the resulting percentage to exceed the percentage determined under paragraph (2)(A)(ii) of this subsection; plus

"(ii) seventy-five percent of the remainder of the adjustment under subsection (b)(1) of this section.

"(C) In the case of each annuity that is subject to this subsection and that has a commencing date for which the percentage determined under paragraph (2)(A)(i) of this subsection is equal to or greater than the percentage determined under paragraph (2)(A)(ii) of the subsection, the annuity shall be increased by seventy-five percent of such portion of the adjustment under subsection (b)(1) of this section as does not, when stated as an average percentage increase and included in the percentage determined for such commencing date under paragraph (2)(A)(i) of this subsection, cause the resulting percentage to exceed the percentage determined under paragraph (2)(A)(ii) of this subsection by more than 20 percent.

"(D) For the purpose of this subsection, the annuity of a survivor of a deceased annuitant shall be deemed to have commenced on the date the annuity of the deceased annuitant commenced."; and

(B) in subsection (e) by striking out "fixed at the nearest" and inserting in lieu thereof "rounded to the next lowest";

(9) in section 8341--

(A) in subsections (a)(1)(A) and (a)(2)(A) by striking out "1 year" and inserting in lieu thereof "9 months";

(B) in subsection (a)(4)--

(i) by amending subparagraph (C) to read as follows:

"(C) such unmarried dependent child between 18 and 19 years of age who is a full-time elementary or secondary school student.";

(ii) in the next to the last sentence by striking out "22nd" and "22" and inserting in lieu thereof "19th" and "19", respectively; and

(iii) in the last sentence by striking out "5" and inserting in lieu thereof "4";

(C) in subsection (b)(1)--

(i) by striking out "spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow," and inserting in lieu thereof "widow or widower, the widow"; and

(ii) by striking out "section 8339(a)-(i) and (o)" and inserting in lieu thereof "section 8339(a)-(h) and (n)";

(D) in subsection (b)(3) in the second and third sentences by striking out "spouse, widow," both times that phrase appears and inserting in lieu thereof "widow";

(E) in subsections (b)(3), and (c), by striking out "day after" each place that phrase appears and inserting in lieu thereof "first day of the month in which";

(F) in subsection (d)--

(i) by striking out "(i), and (o)" and inserting in lieu thereof "and (n)"; and

(ii) by striking out "day" and inserting in lieu thereof

"first day of the month";

(C) in subsection (e)(2)--

(i) in the first sentence by striking out "from and after February 28, 1948, commences on the day after" and inserting in lieu thereof ", commences on the first day of the month after the employee or Member dies, on the first day of the month in which"; and

(ii) in subsection (e)(2)(C) by striking out "22" and inserting in lieu thereof "19";

(H) in subsection (f)(1) by striking out "day" and inserting in lieu thereof "first day of the month";

(I) in subsection (g) by striking out "day" and inserting in lieu thereof "first day of the month after"; and

(J) by adding at the end thereof the following new subsection:

"(h) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee's or Member's death in order to qualify as the employee's or Member's widow or widower shall be deemed satisfied where the employee or Member dies within the applicable 9-month period, if--

"(1) the death of the employee or Member is accidental; or

"(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced

and the aggregate time married is at least 9 months (unless the Office of Personnel Management determines that at the time of the remarriage involved the individual could not reasonably have been expected to live for 9 months.";

(10) in section 8342--

(A) by amending subsection (a) to read as follows:

"(a) An employee or Member who is separated from the service, or is transferred to a position in which he is not subject to this subchapter, and who remains not subject to this subchapter for at least 31 days, is entitled to be paid the lump-sum credit if he files an application for refund, provided he has not been reemployed in a position subject to this subchapter at the time of application, and will not be eligible for an annuity under this subchapter within 31 days of the application. The receipt of payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service for which the lump-sum was paid, until the employee or Member is reemployed in the service subject to this subchapter."; and

(B) in subsection (h) by striking out "of 3 percent a year" and inserting in lieu thereof "determined in accordance with section 8334(e) of this title";

(11) in section 8343(a)--

(A) by striking out "after July 31, 1920"; and

(B) by striking out "at 3 percent a year" and inserting in lieu thereof "determined in accordance with section 8334(e) of

this title";

(12) in section 8344—

(A) in subsection (a)(A) by striking out "section 8339(a), (b), (d), (e), (h), (i), and (o)" and inserting in lieu thereof "section 8339(a), (b), (d), (e), (h), and (n)"; and

(B) in subsection (d)(2) by striking out "after December 31, 1958,";

(13) in section 8345—

(A) in subsection (a) by striking out "fixed at the nearest" and inserting in lieu thereof "rounded to the next lowest";

(B) by amending subsection (b) to read as follows:

"(b) Except as otherwise provided—

"(1) an annuity of an employee or Member commences on the first day of the month after—

"(A) separation from the service; or

"(B) pay ceases and the service and age or disability requirements for title to annuity are met; and

"(2) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.";

(C) by amending subsection (c) to read as follows:

"(c) An annuity payable from the Fund terminates on the last day of the month before death or other terminating event provided by this subchapter occurs."; and

(D) by repealing subsection (f);

(14) by amending section 8346(b) to read as follows:

"(b) When a payment to an individual under this subchapter has been made erroneously or in an incorrect amount, recovery shall be made under regulations prescribed by the Office of Personnel Management by reducing subsequent payments to which the individual is entitled. If the individual ceases to be entitled before the recovery is completed, recovery shall be made by decreasing any subsequent payments under this subchapter to any other individual which are attributable to the service of the same employee or Member. However, recovery may be waived if the individual whose payment is to be reduced is not at fault for the incorrect payment and recovery would defeat the purpose of this subchapter or be contrary to equity and good conscience.";

(15) in section 8347—

(A) in subsection (c)—

(i) by striking out the period at the end thereof and inserting in lieu thereof a comma; and

(ii) by adding at the end thereof the following: "or for failure to furnish information required in the administration of this subchapter."; and

(B) by adding at the end thereof the following new subsection:

"(n) Notwithstanding any other provision of this subchapter, the Office may waive any procedural requirement relating to timely submission which is contained in or imposed pursuant to this subchapter when, in the judgment of the Office, it would be contrary to equity and good conscience not to do so.";

(16) by repealing section 8901(4); and

(17) in section 8908 by adding at the end thereof the following new subsection:

"(c) An individual whose disability annuity was terminated under section 8337(d) of this title because of recovery or restoration to earning capacity and whose annuity is restored under section 8337(e) of this title may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 of this title if such individual was covered by any such plan immediately before such annuity was terminated.".

Sec. 3. Section 4109(a) of title 38, United States Code, is amended to read as follows:

"Persons appointed to the Department of Medicine and Surgery after December 31, 1982, and serving on a part-time basis at any time after that date shall be subject to the provisions of and entitled to benefits in accordance with section 8339(o) of title 5. Persons appointed on or before that date are subject to subsection (b) of this section.".

Sec. 4. (a) The amendments made by sections 2 and 3 of this Act shall take effect, except as otherwise specifically provided in such amendments, on the date of enactment or on such later date or dates as the Director of the Office of Personnel Management shall determine, but not later than 180 days after the date of enactment of this Act, and shall, except as provided by subsection (b) of this section, apply only to annuities commencing on or after the date of enactment of this Act.

(b)(1) Annuities commencing before the date of enactment of this Act may be reduced or terminated as a result of paragraphs (6)(B)-(C), (9)(B),

(9)(F)-(G), (13)(C), (14), and (15) of section 2 of this Act and as provided by paragraph (3) of this subsection.

(2) The amendments made by paragraph (8) of section 2 of this Act to subsection (e) of section 8340, and by paragraph (13)(A) of section 2 of this Act shall not apply to an annuity commencing before the date of enactment of this Act until the amount of such annuity is first adjusted under some other provision of chapter 83 of title 5, United States Code, including any amendments made by this Act.

(3) Notwithstanding the amendments made by paragraphs (9)(E) and (9)(F) of section 2 of this Act, an annuity being paid a post-secondary school student-child under section 8341 of title 5, United States Code, on the date of enactment of this Act, shall be continued during the months of September through April of each year only to the extent provided by that section before the enactment of this Act, except that such an annuity may not be increased for any reason, and shall be reduced by 25 percent of the rate payable on the date of enactment of this Act each September after that date until the annuity is eliminated.

(c) Notwithstanding the amendment made by paragraph (3)(C) of section 2 of this Act, any period of leave of absence without pay which occurred before the date of enactment of this Act shall be subject to section 8332(f) of title 5, United States Code, as that section provided before the enactment of this Act.

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill

"To amend title 5, United States Code, to limit Civil Service Retirement cost-of-living adjustments, to eliminate wasteful and unnecessary provisions of the Civil Service Retirement System, to improve the administration of that System, and for other purposes."

The first section titles the bill as the "Civil Service Retirement Amendments of 1982."

The second section contains the various amendments to title 5, United States Code, designed to improve the administration of the Civil Service Retirement System.

Paragraph (1) of section 2 amends section 5596(b)(1)(A)(i) to provide for the reduction of a back pay award by amounts paid to the employees from a Federal retirement system as a result of the unjustified or unwarranted personnel action on which the award was based. An amount offset from a back pay award for this reason would have to be returned to the appropriate retirement system.

Paragraph (2) of section 2 amends section 8331(8)(C) to provide that, for the purpose of lump-sum credit, interest is payable in amounts provided under the amended section 8334(e) of title 5, United States Code.

Paragraph (3) of section 2 amends section 8332 by repealing subsection (b)(2), thereby eliminating credit under the Civil Service Retirement System for service as an employee of the Pan American Sanitary Bureau; by amending subsection (b)(3), (8), (9), and (11) to make a conforming change by eliminating the references to section 8339(i) which is repealed by this bill; and by amending subsection (f) to limit to 30 days in a calendar year service credit for leave without pay.

Paragraph (4) of section 2 amends section 8333 by adding a new subsection (d) to continue the current use of leave without pay in fulfilling the requirement of 1 year of service in a covered position in the last 2 years. That requirement is used in determining eligibility for an annuity under the System.

Paragraph (5) of section 2 amends section 8334 by adding at the end of subsection (a)(2) a provision requiring agencies to make deposits, with interest, of both agency and employee contributions where the agencies have erroneously failed to make such deposits; by amending subsection (c) to require deposits in order to credit, for annuity computation purposes, service for which retirement deductions or deposits have not been made; by amending subsection (d) to expressly establish that only an individual who has served at least one year out of the last two in a covered position may redeposit refunded deductions, and to provide for installment deposits and redeposits; and by amending subsection (e) to require

the Office of Personnel Management to establish, by December 31 of the preceding year, for each calendar year after December 31, 1983, the rate of interest applicable to refunds, deposits, excess deductions, and voluntary contributions under the System (with the rate to be equal to the average yield for the preceding fiscal year on obligations in which the Civil Service Retirement and Disability Fund was invested).

Paragraph (6) of section 2 amends section 8337 by inserting in subsection (a) a provision precluding disability retirement by an employee who is eligible for optional retirement under section 8336(a), (b), (c), (e), or (f); by amending subsection (d) to require termination of disability annuity payments to an individual under age 60 who is recovered and has been offered a position at the same grade or level as, or at a grade or level equivalent to, the position he left and in which he is capable of serving, or is restored to earning capacity, and to allow an individual who has attained age 60 to request an examination or review, and to reduce from two years to one year the period used in reviewing income to determine restoration to earning capacity and from one year to three months the grace period during which annuity payments are continued after a finding of restoration to earning capacity; and by amending subsections (d) and (e) to expressly authorize the use of other appropriate information, examinations, and evaluations, including evidence in addition to medical examinations, in determining recovery from disability.

Paragraph (7) of section 2 amends section 8339 by adding at the end of subsection (e) a requirement that any refund received by an air traffic controller be redeposited, with interest, as a prerequisite to receiving the guaranteed minimum annuity provided by that subsection of 50 percent of the employee's average pay; by correcting erroneous citations in subsections (f) and (j)-(l); by repealing subsection (i), which has allowed service credit, with an annuity reduction, for service where a deposit is due; and by adding at the end a new subsection (o) to provide that, notwithstanding sections 8331(4) and 8332(a), in computing an annuity under this section, except under the second sentence of subsection (e) or subsection (f) or (g), for an individual who first becomes an employee after December 31, 1982, service credit shall be prorated for service on less than a full-time basis and the full annual rate of basic pay payable shall be deemed to be the rate of basic pay for such part-time service.

Paragraph (8) of section 2 amends section 8340 to establish limits on cost-of-living adjustments for persons retiring in the future, and for those already retired on the date of enactment, both such changes to be effective on the enactment date. First, it amends subsection (b) of section 8340 to limit each annual March cost-of-living adjustment in annuities commencing after enactment to the lesser of (A) the rise in the Consumer Price Index (CPI) during the preceding calendar year or (B) the average percentage amount of the most recent General Schedule (GS) pay adjustment.

Second, it adds a new paragraph (2) to subsection (b) of section 8340, limiting the amount of each annual cost-of-living adjustment to be made in annuities that commenced before enactment. For each such annuity, the Office of Personnel Management would be required, at the time of each March adjustment, to compare (A)(i), the cumulative average percentage amount that annuity had been increased from the date the annuity commenced, with (A)(ii), the cumulative percentage amount such an annuity would have increased if annuity adjustments from the commencing date had been equal to GS pay increases.

If, for a given annuity commencing date, (A)(i) is less than (A)(ii), the annuities which commenced on that date would be increased only by that part of the full adjustment as would bring them up to (A)(ii), and by 75 percent of the remainder of the full adjustment. If the amount of (A)(i) exceeds (A)(ii), the annuities would be increased by 75 percent of the adjustment, but only to the extent the resulting annuity would not exceed 120 percent of (A)(ii). No adjustment would be provided if the resulting annuity would exceed 120 percent of (A)(ii).

Paragraph (8) also amends subsection (e) of section 8340 to require rounding annuities after adjustment to the next lower dollar rather than fixing them at the nearest dollar.

Paragraph (9) of section 2 amends section 8341 by revising subsections (a) and (b) to standardize the marriage requirement for receipt of survivor benefits at 9 months for all widows and widowers, regardless of whether they were married to the employee annuitant at the time of retirement; by amending subsections (a) and (e) to eliminate survivor annuity payments formerly made to young adults 18 years of age and older by reason of their post-secondary school student status, while continuing to pay benefits to secondary school students until they complete secondary school or reach age 19, whichever occurs first; by amending subsections (b)(1) and (d) to make conforming changes in citations; by amending subsections (b)(3), (c), and (f)(1) to provide for the commencement of certain survivor annuities on the first day of the month in which the death of a retired employee or Member occurs; by amending subsections (d), (f)(1), and (g) to provide for the commencement or restoration of certain survivor annuities on the first day of the month after the death of the employee or Member or other determinative event; and by adding at the end a new subsection (h) which deems the marriage requirement satisfied in cases of accidental death or in cases involving remarriage in which the aggregate time married is at least 9 months.

Paragraph (10) of section 2 amends section 8342 by amending subsection (a) to impose a 31-day minimum separation requirement for entitlement to a refund of retirement deductions, and by amending subsection (h) to provide that, for deductions withheld from an individual who has sufficient service to qualify for the maximum annuity provided under section 8339 of title 5, United States Code, interest is payable in accordance with amended section 8334(e) of title 5, United States Code.

Paragraph (11) of section 2 amends section 8343(a) to provide that interest on voluntary contributions will be determined in accordance with amended section 8334(e) of title 5, United States Code, and to eliminate an obsolete reference.

Paragraph (12) of section 2 amends section 8344 to make conforming changes and eliminate an obsolete reference.

Paragraph (13) of section 2 amends section 8345 by amending subsection (a) to require annuities to be rounded to the next lowest dollar rather than fixing them at the nearest dollar; by amending subsection (b) to provide that, except as otherwise provided, an annuity of an employee or Member commences on the first day of the month after either the date of separation or the date pay ceases and the requirements for title to an annuity are met, and to provide that, except as otherwise provided, any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based; by revising subsection (c) to provide a uniform termination date for all annuities payable from the Civil Service Retirement and Disability Fund of the last day of the month before death or other terminating event occurs, and by repealing subsection (f), relating to minimum annuities.

Paragraph (14) of section 2 amends section 8346(b) to authorize recovery of an overpayment by reducing the annuity of the individual who received the overpayment or, in some cases, by reducing the payments to another individual whose annuity is attributable to the service of the same employee or Member.

Paragraph (15) of section 2 amends section 8347 by revising subsection (c) to give the Office of Personnel Management the authority to suspend or deny an annuity when the annuitant or applicant fails to furnish information required in administering the Civil Service Retirement System; and by adding at the end a new subsection (n) authorizing the Office of Personnel Management to waive any procedural requirements relating to timely filing when equity and good conscience so dictate.

Paragraph (16) of section 2 repeals section 8901(4) of title 5, United States Code, relating to the definition of creditable service in the Federal Employees Health Benefits Program, in order to avoid changing the present use of leave without pay in determining eligibility to carry health benefits into retirement.

Paragraph (17) of section 2 amends section 8908 of title 5, United States Code, by adding at the end a new subsection (c) which would permit, under Office of Personnel Management regulations, reenrollment in a health benefits plan by a disability annuitant whose annuity is restored under section 8337(e) of that title after having been terminated because of recovery or restoration to earning capacity as provided in section 8337(d) of that title.

Section 3 of the bill amends section 4109(a) of title 38, United States Code, to provide that employees of the Department of Medicine and Surgery of the Veterans' Administration first hired after December 31, 1982, are subject to the provisions of chapter 83 of title 5, United States Code, including the provisions governing computation of retirement benefits for part-time employees which were added by section 2 of this bill.

Section 4(a) of the bill provides that the amendments made by sections 2 and 3 of this bill shall take effect, except as otherwise specifically provided, on the date of enactment or on such later date or dates as the Director of the Office of Personnel Management shall determine, but not later than 180 days after enactment. It also provides that, except as provided by subsection (b) of section 4, those amendments apply only to annuities commencing on or after the date of enactment of the bill. Section 4(b)(1) of the bill provides that annuities which commence before the date of enactment of the bill may be reduced or terminated as a result of paragraphs (6)(B)-(C), (9)(B), (9)(F)-(G), (13)(C), (14), and (15) of section 2 of the bill, and as provided by paragraph (3) of section 4(b). Paragraph (2) provides that annuities now payable will be rounded down to the next lowest dollar only when they are first adjusted for some other reason such as a cost-of-living adjustment. Paragraph (3) holds each annuity paid a post-secondary school student-survivor at the rate payable on the date of enactment of the bill. Such an annuity may be continued during the months of September through April only to the extent previously provided by law, may not be increased for any reason, and shall be reduced by 25 percent of the rate payable on the date of enactment each subsequent September until eliminated. Section 4(c) of the bill provides that, notwithstanding section 2(3)(C) of the bill, leaves of absence which occur before the enactment of this bill are treated as they would have been previously under section 8332(f) of title 5, United States Code.

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